

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NICK PEARSON, FRANCISCO PADILLA,
CECILIA LINARES, AUGUSTINA BLANCO,
ABEL GONZALEZ, and RICHARD
JENNINGS, On Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

v.

NBTY, INC., a Delaware corporation; and
REXALL SUNDOWN, INC., a Florida
corporation; TARGET CORPORATION, a
Minnesota Corporation,

Defendants.

Case No.: 11 CV 07972

CLASS ACTION

Judge James B. Zagel

NOTICE OF FILING

Plaintiffs Francisco Padilla, Cecilia Linares, Augustina Blanco, Abel Gonzalez, and Richard Jennings (collectively, "Plaintiffs"), jointly with Defendants NBTY, Inc.; Rexall Sundown, Inc.; and Target Corporation (collectively, "Defendants"), hereby give notice of filing Amended Exhibits C and D to the Settlement Agreement attached as Exhibit 1 to the Memorandum in Support of Motion for Preliminary Approval of Class Action (D.E. 213-2). These exhibits are the Long Form Notice and the Summary Notice to be used in the Notice Program. These Notices have been amended to (i) clarify the impact of the previous settlement, particularly for consumers who made claims under the previous settlement; and (ii) clarify the scope of the release. For the Court's convenience, the significant changes have been highlighted in yellow. The highlighting will not be used in the final versions.

Dated: July 21, 2015

Respectfully submitted,

NBTY, Inc.; Rexall Sundown, Inc.; Target Corporation

By: /s/ Kara L. McCall

Kara L. McCall
T. Robert Scarborough
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, IL 60603
Telephone: (312) 853-7000

Counsel for Defendants NBTY, Inc.; Rexall Sundown, Inc.; Target Corporation

Stewart M. Weltman
STEWART M. WELTMAN, LLC
53 W. Jackson, Suite 364
Chicago, Illinois 60604
Telephone: (312) 588-5033
(Of Counsel: Levin Fishbein Sedran & Berman)

Of Counsel:
Elaine A. Ryan
Patricia N. Syverson
Lindsey M. Gomez-Gray
BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.
2325 E. Camelback Rd., Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100

Attorneys for Plaintiffs Francisco Padilla, Cecilia Linares, Augustina Blanco, and Abel Gonzalez

Peter N. Freiberg (admitted *pro hac vice*)
Jeffrey I. Carton (admitted *pro hac vice*)
James R. Denlea (admitted *pro hac vice*)
DENLEA & CARTON LLP
One North Broadway, Suite 509
White Plains, New York 10601
Telephone: (914) 920-7400

Attorneys for Plaintiff Richard Jennings

CERTIFICATE OF SERVICE

I, Kara L. McCall, one of the attorneys for Defendants Target Corporation; NBTY, Inc.; and Rexall Sundown, Inc., certify that on the 21st of July, 2015, I caused a copy of the foregoing **NOTICE OF FILING** to be filed electronically with the Clerk of Court, to be served by operation of the Court's electronic filing system to all counsel of record.

/s/Kara L. McCall
Kara L. McCall

AMENDED EXHIBIT C (Long Form Notice)
TO EXHIBIT 1 (Settlement Agreement)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Pearson, et al.

Plaintiff

v.

NBTY, Inc., et al.,

Defendant

Case No. 1:11-cv-07972

**NOTICE OF CLASS ACTION
SETTLEMENT**

If You Purchased Certain Glucosamine and Chondroitin Joint Supplements Manufactured by Rexall Sundown, You Can Receive Money from a Class Action Settlement.

(A federal court authorized this notice. This is not a solicitation from a lawyer.)

Your legal rights are affected whether or not you act. Please read this notice carefully. This is the second settlement entered in connection with this litigation. The first settlement was not approved by the Court, so no payments were made under that settlement. For more information on the previous settlement, and the differences between the two settlements, go to www.GlucosamineSettlement.com.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM POSTMARKED OR COMPLETED ONLINE BY [MONTH, DAY] 2015	<p><u>The only way to receive a payment.</u></p> <p><u>If you already submitted a claim pursuant to the earlier settlement, you may, but do not have to, submit a new claim. The new settlement may provide you more compensation than the earlier settlement.</u> If you submit a new claim, you will be entitled to compensation based on the highest number of bottles you claim in your previous claim or your new claim.</p> <p>The Court still has to decide whether to approve this settlement. Payments will be made if the Court approves this settlement and after any appeals are resolved.</p>
EXCLUDE YOURSELF FROM THE CLASS BY [MONTH, DAY] 2015	<p>Receive no payment.</p> <p>This is the only option that allows you to pursue your own claims by filing your own lawsuit at your own expense. If you excluded yourself from the previous settlement of this case and wish to exclude yourself from this new settlement, you must again submit a letter to the Settlement Administrator requesting to be excluded from the Settlement Class.</p>
COMMENT BY [MONTH, DAY] 2015	<p>Write to the Court about why you do, or do not, like the settlement. You must remain in the Settlement Class to comment in support of or in opposition to the settlement. If you commented on the previous settlement and wish to comment again, you must submit a new comment.</p>
ATTEND A HEARING ON [MONTH, DAY] 2015	<p>Ask to speak to the Court about the fairness of the settlement.</p>
DO NOTHING	<p>Receive no payment, and give up rights to sue, including any future suits based on your purchases of the glucosamine products with labeling that complies with the settlement agreement.</p>

These rights and options, and the deadlines to exercise them, are explained in this notice. This notice provides additional information, but is not the claim form. To file a claim for monetary compensation, you should go to www.GlucosamineSettlement.com, write to the Glucosamine Settlement c/o Settlement Administrator at P.O. Box 170, Philadelphia, PA 19105-0170, or call the toll-free number (888) 972-6583.

1. Why should I read this notice?

On _____, 2015, this Court preliminarily approved a settlement of this case (the “Litigation”). This notice describes the settlement. Your rights and options—and the deadlines to exercise them—are explained in this notice. Your legal rights are affected regardless of whether you act or not.

2. What is the Litigation about?

Rexall Sundown, Inc. and NBTY, Inc. (and their affiliated companies) (collectively, “Rexall”) manufacture and sell joint health dietary supplements containing the ingredients glucosamine and chondroitin (“the Glucosamine Products”). Class actions have been filed in which the plaintiffs, on behalf of themselves and other purchasers, allege that certain statements made on the labeling of certain Glucosamine Products are false. No allegations related to safety or physical injury have been made. **The Parties agreed to a settlement in 2013, but that settlement was not approved by the Court, so it is null and void. The parties have reached a second, new settlement.**

3. Why is there a settlement?

The Court has not decided in favor of either side in the case. Rexall stands by the Glucosamine Products and their efficacy. Rexall is settling to avoid the expense, inconvenience, and inherent risk of litigation. Plaintiffs and their attorneys assert that the settlement is in the best interests of the Settlement Class, because it provides a fair and reasonable recovery now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

4. Who is included in the settlement?

The Settlement Class is defined as all consumers who, during particular time periods and in certain U.S. locations, purchased for personal use and not resale or distribution certain joint health dietary supplements: (a) sold by Rexall or any of its affiliates under the brand names of Rexall or its affiliates; or, (b) sold under another brand name by a company not affiliated with Rexall and manufactured by (i) Rexall, (ii) any of Rexall’s affiliates, or (iii) any entities that manufactured or sold the Covered Products from which Rexall acquired assets or contracts (collectively, “Covered Products”). The Covered Products and their time periods and areas of sale covered by this Settlement are identified in Attachment A to this Notice.

Excluded from the Settlement Class are all persons who submit valid requests for exclusion from the Settlement Class (see Question 7).

5. What does the settlement provide?

Rexall agrees to pay \$7,500,000 to a Settlement Fund, which will be used to pay claims made by consumers, attorneys’ fees for class counsel (see 6.b), incentive awards to the class representatives (see 6.a), and notice and administration costs (to the extent that they exceed \$1,500,000). Rexall also agrees to pay an additional \$1,500,000 for costs of notice and administration of the settlement.

- a. **Monetary Recovery.** If you submit a valid claim post-marked or submitted online by , 2015, you will receive \$8.00 per bottle of Covered Product purchased, up to a maximum of thirteen (13) bottles, or **\$104.00, per household**. If you already submitted a claim in the previous settlement, you can – but are not required to – submit a new claim form; you will receive compensation based upon the highest number of bottles from either claim.
- b. **Leftover Monies.** If there are leftover monies available in the Settlement Fund after the claims, attorneys’ fees, incentive awards, and notice and administration costs are paid, the remaining funds will be distributed *pro rata* to all Settlement Class members who have submitted a timely and valid claim, up to a maximum of **\$200 per household**. If there are still leftover monies, those monies are to be paid to the Orthopaedic Research and Education Foundation.
- c. **Labeling Changes.** Rexall has also agreed to make certain modifications to the labeling of Covered Products, which are described in Paragraph 9 to the Settlement Agreement.

6. Who represents the Settlement Class?

- a. **Class Representatives.** For purposes of the settlement, the Court has appointed the following plaintiffs named in the Litigation to serve as the class representatives: Richard Jennings, Cecilia Linares, Abel Gonzalez, Francisco Padilla, and Augustino Blanco. Settlement Class Counsel will request incentive awards up to the amount of \$5,000 for each class representative, to be paid from the Settlement Fund.
- b. **Settlement Class Counsel.** The Court has appointed the following attorneys and law firms to represent the Settlement Class as legal counsel: Jeffrey I. Carton and Peter N. Freiberg, DENLEA & CARTON, LLP, 2 Westchester Park Drive, Suite 410, White Plains, New York 10601; Elaine A. Ryan, BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C., 2325 E. Camelback Road, Suite 300, Phoenix, Arizona 85016; and Stewart M. Weltman, BOODELL & DOMANSKIS, LLC, 353 N. Clark Street, Suite 1800, Chicago, Illinois, 60654. From the inception of the litigation in 2011 to the present, Settlement Class Counsel have not received any payment for their services in prosecuting the cases or obtaining the settlement, nor have they been reimbursed for any out-of-pocket expenses they have incurred. Settlement Class Counsel will apply to the Court for an award of attorneys’ fees and actual expenses to be paid from the Settlement Fund, not to exceed 33.33% of the Settlement Fund (or \$2,500,000).

7. How can I exclude myself from the Settlement Class?

To exclude yourself from the Settlement Class, you must send a letter saying that you want to be excluded from the class in the Glucosamine Products Litigation. Your written exclusion request must include your name, address, telephone number, and signature, and a statement to the effect that: “I/We hereby request to be excluded from the proposed Settlement Class in the Glucosamine Products Litigation.” Your exclusion request must be post-marked and sent to the following address no later than _____, 2015: Glucosamine Settlement c/o Settlement Administrator, P.O. Box 170, Philadelphia, PA 19105-0170.

If you excluded yourself from the previous settlement of this case and wish to exclude yourself from the new settlement, you must again submit a letter to the Settlement Administrator requesting to be excluded from the Settlement Class.

If you elect to exclude yourself, you will (i) not be able to submit a claim to receive any monetary payment, (ii) not be bound by any further orders or judgments in this case, and

(iii) remain able to pursue claims alleged in the Litigation against Rexall by filing your own lawsuit at your own expense. If you proceed on an individual basis, you may receive nothing at all, or more, or less, of a benefit than you would otherwise receive under this settlement.

8. How can I tell the Court what I think about the settlement?

If you do not exclude yourself from the Settlement Class, you can comment in support of or in opposition to the settlement. Your objection or comment must be submitted in writing to all three (3) of the following addresses below and must be post- marked by _____, 2015:

Court: Clerk of Court, United States District Court
Northern District of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, Illinois, 60604

Settlement Class Counsel: Peter N. Freiberg
DENLEA & CARTON, LLP
2 Westchester Park Drive, Suite 140
White Plains, New York 10604

Rexall's Counsel: Kara L. McCall
SIDLEY AUSTIN LLP
One S. Dearborn Street
Chicago, Illinois 60603

The objection or comment must include the case name and number (*Pearson, et al. v. NBTY, Inc., et al.*, No. 1:11-cv-07972) and also include: (a) your full name, address, and telephone number; (b) a signed statement that you are a member of the Settlement Class; (c) the grounds for the objection; (d) whether you and/or your attorney (if any) intend to appear at the Fairness Hearing, and lists the name, address, and telephone number of the attorney, if any, who will appear.

The Court will consider all comments from Settlement Class members. To appeal from any provision of the order approving the Settlement as fair, reasonable, and adequate, the award of incentive payments, or the award of reasonable attorneys' fees and expenses paid by Rexall and awarded to Settlement Class Counsel, you must appear in person or through your counsel, or, ask the Court in your objection to excuse such appearance prior to the Fairness Hearing.

9. What is the effect of final settlement approval?

If the Court grants final approval to the settlement, all members of the Settlement Class will release all claims or causes of action arising from or relating to: (i) claims that were or could have been asserted in the Litigation; and (ii) the Covered Products, including their efficacy or performance and any and all advertising, labeling, packaging, marketing, claims, or representations of any type whatsoever regarding the Covered Products; and (iii) all labels or packaging for the Covered Products that conform to the terms of the Settlement. The Released Claims do not include claims for personal injury. All members of the Settlement Class who do not exclude themselves from the Settlement Class will release any claims they may have against Rexall and related entities covered by the release. This release includes future claims related to the Covered Products, as long as the labeling complies with the Settlement. You may refer to

Paragraphs 12 and 13 of the Settlement Agreement for a full description of the claims and persons that will be released upon final approval of the settlement.

You can obtain a copy of the Settlement Agreement (i) from the Clerk of the Court, (ii) online at www.GlucosamineSettlement.com, (iii) by writing to Glucosamine Settlement c/o Settlement Administrator, P.O. Box 170, Philadelphia, PA 19105-0170, or (iv) by calling the toll-free number (888) 972-6583. If you do not wish to be a Settlement Class member, you must exclude yourself from the Settlement Class (see Question No. 7, above).

If the settlement is not approved, the case will proceed as if no settlement had been attempted. There can be no assurance that if the settlement is not approved and litigation resumes, the Settlement Class will recover more than is provided for under the settlement, or will recover anything.

10. When and where will the Court hold a hearing on the fairness of the settlement?

A Fairness Hearing has been set for _____, 2015, at _____ a.m./p.m., before Judge Zagel in the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed settlement, including the amount requested by Settlement Class Counsel for attorneys' fees and expenses, and incentive awards for the Plaintiffs. **The motions for attorneys' fees and costs and Plaintiff incentive awards will be posted on the website after they are filed.** You do not need to attend the Fairness Hearing to remain a class member or obtain a settlement payment.

11. How do I receive my share of the settlement?

If you do not exclude yourself from the Settlement Class, and would like to receive money, you must submit a timely and valid claim form as set forth in Question # 5 above. Claim forms must be submitted online or post-marked by _____, 2015. You can download a copy of the appropriate claim form online at www.GlucosamineSettlement.com, or by writing to Glucosamine Settlement c/o Settlement Administrator, P.O. Box 170, Philadelphia, PA 19105-0170, or by calling the toll-free number (888) 972-6583.

If you submitted a claim form under the previous settlement of this case, you may, but are not required to, submit a new claim form. If you submit a new claim form, you will be entitled to compensation based on the highest number of bottles you claim in your previous claim or your new claim form.

12. What happens if I do nothing at all?

If you do nothing, you will receive no payment from the settlement. You will still be part of the Settlement Class, however, and, subject to the release described in Paragraphs 12 and 13 of the Settlement Agreement. Please refer to Paragraphs 12 and 13 of the Settlement Agreement for a full description of the claims and persons that will be released upon final approval of the settlement.

13. Where do I get additional information?

This notice provides only a summary of the matters relating to the settlement. For more detailed information, you may wish to review the Settlement Agreement dated April 10, 2015. You can view the Settlement Agreement and get more information at www.GlucosamineSettlement.com. You can also get more information by writing to Settlement Class Counsel at the addresses listed in Question # 8 or calling toll-free (888) 972-6583. The Settlement Agreement and all other

pleadings and papers filed in connection with the Settlement are available for inspection and copying during regular business hours at the office of the Clerk of the United States District Court, Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604.

**PLEASE DO NOT CONTACT THE COURT OR REXALL WITH QUESTIONS
ABOUT THE SETTLEMENT**

AMENDED EXHIBIT D (Summary Notice)
TO EXHIBIT 1 (Settlement Agreement)

If You Purchased Certain Glucosamine and Chondroitin Joint Supplements Manufactured by Rexall Sundown, You Can Receive Money from a Class Action Settlement.

[Additional language for individual notice to class members who filed a claim in previous settlement: **If you already filed a claim please note that certain elements of the settlement will affect that claim. Please visit www.glucosaminesettlement.com for complete details and instructions on how this will affect you.**]

A class action settlement has been preliminarily approved in *Pearson, et al. v. NBTY, Inc., et al.*, No. 1:11-cv-07972 (N.D. Illinois). Your rights may be affected by this settlement. Plaintiffs say that glucosamine/chondroitin joint supplements manufactured or sold by Rexall Sundown, Inc. or NBTY, Inc. or their affiliates (“Rexall”) do not provide certain benefits claimed in the labeling. The Court has not decided in favor of either side. Rexall stands by the products.

Rexall has agreed to a settlement, including labeling changes and a \$7,500,000 fund (“the Fund”), plus an additional \$1,500,000 for notice and administration of the settlement, in order to avoid the expense, inconvenience, and risk of litigation. The Fund will be used to pay eligible claims, attorneys’ fees and expenses (not to exceed \$2,500,000), Class Representative awards (up to \$5,000 each), and notice and administration costs (if they exceed \$1,500,000).

Who Is A Class Member?

The Class includes all consumers who purchased certain joint supplements sold or manufactured by Rexall under various brands (“Covered Products”). **This is only a summary.** Specific dates and areas of sale apply. For a complete list of all products covered by this settlement, visit the website, or write to the address at the bottom of the notice.

What Does the Settlement Provide to Class Members?

You will receive \$8.00 per bottle of Covered Product purchased, up to a maximum of thirteen (13) bottles, or **\$104.00 per household**. If money is available in the Fund after claims and other payments are made, it will be distributed *pro rata*, up to a maximum of **\$200 per household**. Any remaining funds after that are to be paid to the Orthopedic Research and Education Foundation.

What do you need to do?

To get money, you must submit a claim form, post-marked or submitted online by _____, 2015. Visit the website, or call the number below to obtain a claim form. If you already submitted a claim in the previous settlement, you can – but are not required to – submit a new claim form; you will receive compensation based upon the highest number of bottles from either claim. **Please visit the website for complete details on how this new settlement affects you.** **To exclude yourself from the settlement class**, you must submit a written exclusion postmarked by _____, 2015. You will not receive any money, but you retain your right to sue on your own regarding these claims. Even if you excluded yourself from the previous settlement, you must submit a new letter of exclusion for this settlement. **If you do not exclude yourself, you can object to the terms of the settlement.** You must submit a written objection postmarked by _____, 2015. Instructions on how to exclude yourself or object can be found on the website. **If**

you do nothing, you will not receive any money and you will be bound by the terms of the settlement. **All members of the Settlement Class who do not exclude themselves will release any claims, including some future claims, related to the Covered Products.**

A final hearing will be held on _____ at _____, to determine the fairness, reasonableness and adequacy of the settlement and to award attorneys' fees and costs. **The motions for attorneys' fees and costs and Class Representative awards will be posted on the website after they are filed.** You may attend the hearing, but you do not have to.

For detailed information and notices, **including a complete description of the Covered Products**, visit www.GlucosamineSettlement.com, or write to: Glucosamine Settlement c/o Settlement Administrator, P.O. Box 170, Philadelphia, PA 19105-0170, or call (888) 972-6583.